

**Subject:** Fwd: Docket #2021-P-W-0012 - Norman Singer Subaqueous Lands Permit Application  
**Date:** Wednesday, June 30, 2021 at 4:45:44 PM Eastern Daylight Time  
**From:** Frank Krogh  
**To:** HearingComments, DNREC (MailBox Resources)  
**CC:** Calder, Gayle H. (DNREC)

#### REQUEST TO DENY

We are owners of a townhouse on the shoreline of Lake Comegys - Unit No. 19 in the Lake Comegys Townhouses - across from the gangway, floating pier and floating dock proposed to be built by the applicant, Norman Singer. The comments filed in this proceeding, as well as the statements presented at the hearing on June 16, overwhelmingly demonstrate that the application is fundamentally flawed and should be denied. As commenters have explained in detail, the application is incomplete in several respects and, on that basis alone, cannot be granted. Even aside from those deficiencies, the construction of such a large, inappropriate structure on a small, shallow pond serving as a wildlife sanctuary could not possibly meet the burden established in the Department of Natural Resources and Environmental Control ("DNREC") regulations controlling such applications. 7 Del. Admin. Code § 7504 (Regulations Governing the Use of Subaqueous Lands). The proposed facility would violate DNREC's public interest mandate, and we request that the application be denied.

As explained in the June 23, 2021 comments filed by Sallie Forman, President and Founder of Save Our Lakes Alliance3 ("SOLA3"), and the memorandum filed by Joan and Denis O'Toole, owners of Units 3 and 4 in the Lake Comegys Townhouses, the application is incomplete and deficient in numerous aspects, including such basic required information as an accurate map and drawings, information regarding adjoining owners, and zoning information, all of which are required by the Section 7504 regulations. (Sec. 3.1.2.) Because the applicant bears the burden of satisfying DNREC that "the requirements of these Regulations have been met" (Sec. 3.4), and an application cannot be "acted upon" until it is "complete" (Sec. 3.1.1.2), the application's numerous deficiencies preclude its approval.

Turning to the "merits" of the application, such as they are, the proposed structure would violate DNREC's conservation, esthetic and other requirements. In reviewing this application, DNREC "shall consider the public interest . . . which might affect the use of subaqueous lands," including "[t]he potential effect on the public with respect to . . . aesthetic enjoyment" and "natural resources." (Sec. 4.6, 4.6.3.) In addition, SOLA3 and David Jasinski, another adjoining homeowner, in their comments filed on June 15, 2020, both point out that the Conservation Easement around the lake, entered into in 2007 and managed by the Delaware Department of Transportation, prohibits any property uses that "adversely affect fish or wildlife habitat."

SOLA3, Mr. Jasinski, the O'Tooles and other commenters describe in detail the adverse esthetic and environmental impact of the proposed overscaled structure on such a small lake. The record details the uniqueness of the shoreline, with its thicket of trees and shrubs immediately adjacent to the proposed structure, as a "wildlife habitat" for migratory birds. DNREC regulations state that boat docking facilities, in particular, "should be located away from critical habitats," irrespective of any showing of adverse impact. (Sec. 4.9.2.3.) Mr. Jasinski also notes that the egrets and herons that nest along the lake are protected under DNREC's Wildlife Action Plan. Frank Anthony Burns, owner of Unit No. 5 of the Lake Comegys Townhouses and President of the Lake Comegys Association of Homeowners, adds that the Delaware legislature declared Lake Comegys a state and national treasure for its environmental qualities in 2004. These and other commenters explain that the lake provides a sanctuary not only for egrets and herons, but also for ducks and other migratory birds, and hosts numerous turtles, which would be especially endangered by a large structure in such shallow water, and several species of fish.

Mr. Jasinski also correctly notes in his June 26, 2021 comments that, contrary to applicant's assertion at the June 16 hearing, the proposed structure runs afoul of the Conservation Easement's absolute command that "[n]o . . . structure of any kind shall be erected or placed on the Property [covered by the Easement]." The gangway clearly extends over the Easement and is thus "placed on the" Easement. The applicant argued at the June 16 hearing that,

by hanging over but not physically touching the ground within the Easement, the gangway would not be “placed on” the Easement, but that bizarre interpretation is belied by the Easement’s “allow[ance],” in measuring its coverage, of three feet from the edge of the foundation of any existing improvement “for structural overhang.” If an applicant could sidestep the Easement by installing a structure to extend over the Easement, without touching the ground, there would have been no need to provide an explicit allowance for “structural overhang” for existing improvements. Under applicant’s reading, any structural overhang would always be allowed, whether a new or existing structure. In any event, DNREC’s own Section 7504 regulations prohibit consideration of applications for “private . . . structures within approved public easements or right-of-ways.” (Sec. 4.9.7). Applicant’s proposed structure is thus doubly barred by being “placed on” and “within” the Conservation Easement.

Furthermore, under applicant’s revised proposal, the gangway, floating pier and floating dock would protrude 21 feet into the narrowest part of the lake - a grotesque intrusion on the tranquility enjoyed by all of the residents along the narrow end of Lake Comegys. SOLA3, in its June 23, 2021 comments, and Mr. Jasinski, in his June 26, 2021 comments, explain that the structure’s projection so far into a narrow portion of the lake violates DNREC’s rule that “no dock . . . or other structure . . . shall extend channelward more than 10 percent of the width of the waterbody at that location. . . .” (Sec. 4.9.2.5). Accepting applicant’s statement that the lake is 130 feet wide at that location, which may be an overestimate, his proposed structure extends at least eight feet too far, even if it were otherwise permissible.

Finally, SOLA3 and Mr. Jasinski, in their June 15, 2020 comments, both correctly note that, because this is the first application to be considered following the state’s acknowledgement of its ownership of the lake, DNREC’s assumption of management of the lake, and the implementation of the Conservation Easement, DNREC’s decision on this application will set its policy for all riparian homeowners on the lake from now on. This application therefore must be reviewed primarily for its precedential impact. “An application may be denied if the activity could cause harm to the environment, either singly or in combination with other activities. . . .” (Sec. 4.2.) As Mr. Jasinski and SOLA both demonstrate in their respective June 15 comments, construction of similarly oversized facilities by all of the homeowners on Lake Comegys would result in a hideous profusion of structures along the shoreline, obliterating much of the “critical habitat” and “aesthetic enjoyment” that Lake Comegys provides and the regulations protect.

Accordingly, for the reasons summarized above and developed in the comments filed on this matter, as well as the statements presented at the hearing, the application should be denied.

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Sent from my iPad